

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 16577 of 2004(W)

PETITIONER:

**V.K. MUHAMMED SHAJI, VELIYIL HOUSE,
PADYATTAMKARA, EDAPPILLY P.O., KOCHI-20.**

**BY ADV. SRI. PAULSON C. VARGHESE
SRI. C. ARUN PRASANTH**

RESPONDENTS:

1. INDUSTRIAL TRIBUNAL, ALAPPUZHA.

**2. THE SECRETARY, ERNAKULAM CHAMER OF
COMMERCE, SHANMUGHAM ROAD, COCHIN-11.**

**BY ADV. SRI. E.K. NANDAKUMAR, SC
SRI. A.K. JAYASANKAR NAMBIAR
SMT. PRIYA MAHESH
SMT. PRIYA MANJOORAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT. P1 : COPY OF THE CLAIM STATEMENT FILED BY THE PETITIONERS.**
- EXT. P2 : COPY OF THE WRITTEN STATEMENT FILED BY THE SECOND RESPONDENT.**
- EXT. P3 : COPY OF THE DEPOSITION OF THE ENQUIRY OFFICER**
- EXT. P4 : COPY OF THE LIST OF DOCUMENTS AND WITNESSES DT. 25.9.1998 ISSUED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.**
- EXT. P4(a) : COPY OF THE LETTER DATED 16.3.1998 ISSUED BY THE SECOND RESPONDENT, WHICH IS PRODUCED BEFORE THE ENQUIRY OFFICER BY THE PETITIONER.**
- EXT. P4(b) : COPY OF THE DOCUMENT PRODUCED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.**
- EXT. P5 : COPY OF THE AWARD DT. 1.7.2003 PASSED BY THE FIRST RESPONDENT.**

// True Copy //

P.A. to Judge.

Acd

S. SIRI JAGAN, J.

W.P.(C)No.16577 OF 2004

Dated this the 7th day of December, 2007

JUDGMENT

The workman involved in I.D. No.81/2000 before the Industrial Tribunal, Alappuzha challenges Ext.P5 award passed by the Tribunal in that I.D. The issue referred for adjudication was

"Whether the dismissal of Sri. V.K. Mohammed Shaji is justifiable?, if not, what relief he is entitled to"

Since the dismissal of the workman was after having been found guilty in a domestic enquiry, the Tribunal considered the question of validity of the enquiry as a preliminary point and found that the enquiry was valid and proper. Thereafter, the Tribunal considered the proportionality of punishment and modified the punishment of dismissal directing re-employment of the petitioner as a fresh hand on probation.

2. The petitioner challenges both the preliminary order as well as the award. Preliminary order is challenged on the ground that the domestic enquiry was vitiated for violation of principles of natural justice on two grounds. One is that despite a request

from the workman for assistance of a lawyer or co-worker the same was denied to him. The second is that two documents produced by the petitioner have not either been marked or considered by the Enquiry Officer.

3. The contentions of the petitioner are stoutly opposed by the counsel appearing for the management. He supports Ext.P5 award.

4. I have considered the rival contentions in detail. The contentions raised by the counsel for the petitioner is that the enquiry is vitiated for want of compliance with the principles of natural justice on the ground that the assistance of a lawyer or co-worker was denied to him and that too document produced by the petitioner was refused to be marked and considered. The first question was dealt with by the Tribunal thus:

"To substantiate their contention of enquiry, the management examined the Enquiry Officer himself. He has stated that while conducting enquiry by him, no sort of allegations were raised by the workman. According to him he had no objection in seeking the help of a lawyer by the workman. But the workman was told that if any important legal questions were raised in the enquiry, definitely he

would permit the workman to seek the help of a lawyer. It is also deposed by the Enquiry Officer that even the management had no serious objection in seeking a Lawyer's help by the workman. The allegation that he had not given copies of depositions of the witness to the delinquent is also denied by the enquiry officer. According to him all the documents produced in the enquiry were marked.

The petitioner could not satisfy me that after the Enquiry Officer permitted him to engage a lawyer when important legal questions are raised, he, in fact, during the course of enquiry, requested for the assistance of a lawyer and it was denied to him. In any event, it is settled law that in a domestic enquiry the workman does not have a legal right to get assistance of a lawyer. In fact, I feel that what the Enquiry Officer has done is the correct thing. The assistance of a lawyer is to be granted only when complicated questions of fact and law arise in the case. The Enquiry Officer had specifically permitted the assistance of a lawyer, if and when legal questions are raised in the enquiry. Further from the charges, I do not find any complicated questions of fact or law involved in the enquiry against the petitioner which

necessitated the assistance of a lawyer. Further, the petitioner has never pleaded or proved that he had in fact sought the assistance of a co-worker and the same was denied to him. The following findings of the Tribunal is worth noting in that context:

“On a perusal of the enquiry report and also the depositions of the witnesses recorded, it can only be concluded that enquiry was conducted without much flaws. The cross-examination was conducted by the workman himself. The way in which management witnesses were cross-examined by the workman himself would only indicate that he had cross-examined all the witnesses as a very experienced person. It appears that he even adopted the style of a Criminal Court Lawyer while cross-examining the witnesses. Therefore it cannot be said that on account of refusal to engage a lawyer, the workman had suffered irreparably. The documents marked before this Tribunal as Ext.W1 and W2 were not at relevant or connected with the charges. That will in no way help the workman to prove his innocence. Moreover, the enquiry was conducted by a senior lawyer of the High Court who held various responsible positions in the social life of the Cochin city. Therefore it cannot be concluded that the enquiry was conducted in a unfair and improper manner without giving reasonable opportunity to the workman”.

In view of the said finding, I do not find any merit whatsoever in the first objection raised by the petitioner against the enquiry.

5. Regarding the second contention, the petitioner himself has produced Exts.P4 and P4(b), which are the documents, which, the petitioner complains, has not been received in evidence by the enquiry officer. From a reading of Ext.P4 and P4(b), I do not find that it has any relevance whatsoever to the charges leveled against the petitioner. As is clear from the portion of the award quoted in the previous paragraph herein, it can be seen that the Tribunal also entered the same finding. That being so, the question of considering the same for proving the innocence of the petitioner, does not arise at all. Therefore I do not find any merit whatsoever, in that said contention also. After a reading of the discussion of evidence by the Tribunal, I have absolutely no doubt in my mind that the Tribunal had come to the right conclusion regarding the findings in the domestic enquiry. Therefore there is no scope for interference on that ground also. Now coming to the question of punishment, the Tribunal has considered the matter as follows:

"From the domestic enquiry proceedings and also from the evidence tendered by the workman himself, certain facts are not in controversy. The delinquent workman is a youngster who had crossed only 30 years when he tendered evidence before this Tribunal in February 2003. This Tribunal had occasion to see the demeanor of the delinquent while tendering evidence. It appears he is thoroughly dissatisfied with the work of a peon in the management establishment. Because of that, from the very beginning, he was resisting all the reasonable instructions of his superiors. That is evident from the antecedent brought in evidence from the management side. He was appointed in the year 1992 and he was served with a memo before the expiry of even one year and that was on 13.3.1993. But on his explanation, the disciplinary action ended in warning to him. Thereafter on two occasions, he was forced to tender apology and that is evident from Ext.A4 and A5 marked in the course of domestic enquiry proceedings. In 1997 also, he was suspended from service on 25.10.1997 and that is evident from Ext.A6. He tendered apology when memo of charges was served to him and that is evident from his letter dated 9.12.1997. By accepting the apology he was permitted to rejoin duty on 11.12.1997 within a couple of months, he repeated the same. Therefore it is a fact that the delinquent is of peculiar character having tendency to show resistance to his superiors. That was the reason why whenever he was asked to go elsewhere, he would adopt slow tactics. Apart from this, no major serious misconducts were alleged against him. The management had

shown some kind of leniency in the past and that is probably because of past 40 years of service rendered by the father of the delinquent in the same establishment. Even as a child, the delinquent might have occasion to come to the Management's office along with his father in the management establishment and that might have tempted him to deal everything light heartedly. Therefore considering his age and close association with the establishment, I think, this is a fit case in which one more opportunity can be given to the workman to improve himself. Therefore the punishment of dismissal is modified and management is directed to re-employ him as a fresh hand on probation. The workman shall be put on probation of two years after re-inductment and during the period of two years of probation, if he is repeating the same type of behaviour of insubordination and slow process, management will be at liberty to dispense with his service as that of a probationer.

From a reading of the same, I am of opinion that the Tribunal was undeservedly lenient to the petitioner in the matter of punishment. He was earlier proceeded against not less than five times. In spite of that, the Tribunal imposed only a very minor punishment, which can only be considered as being over sympathetic to the petitioner. That being so, if the Tribunal has erred on this point, it is in favour of the petitioner.

Therefore I do not find any infirmity whatsoever in Ext.P5 award requiring interference by this Court. Accordingly, the writ petition is dismissed.

S. SIRI JAGAN, JUDGE

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